

1 consisting of A, B and C made the decision, here's a
2 resolution which shows the board made a decision. Put it in.
3 Don't give me these general statements. I can't make findings
4 of control on these statements.

5 MR. TOPEL: Well, Your Honor, it is in the remainder
6 of the exhibit and my final comment would be that, that this
7 is a -- an introductory paragraph of testimony and that, that
8 that language which, which --

9 JUDGE CHACHKIN: Well --

10 MR. TOPEL: -- which, which is followed by a
11 sentence that says, "The minorities on the boards have caused
12 the company to do things," and then it concludes with the
13 witness's statement of, of her, her intent or her state of
14 mind. And I think that, that this language is the, is the
15 witness's general explanation of her state of mind and good
16 intent which is then corroborated by -- supported, I'll say
17 corroborated -- by, by substantial ensuing, ensuing testimony
18 and I think the witness -- the correct course is to allow the
19 witness to testify to her state of mind and let the other
20 parties cross-examine her.

21 JUDGE CHACHKIN: Where, where are these facts?
22 Where, where, where is something supporting this contention?

23 MR. TOPEL: The objection --

24 JUDGE CHACHKIN: Where, where, where in all these
25 paragraphs anything dealing with that? You made a statement

1 here --

2 MR. TOPEL: Right.

3 JUDGE CHACHKIN: -- the statement that I just
4 rejected. Is there anything here showing specific board --

5 MR. TOPEL: Yes, Your Honor.

6 JUDGE CHACHKIN: -- action in that regard?

7 MR. TOPEL: Yes, Your Honor.

8 JUDGE CHACHKIN: Where?

9 MR. TOPEL: In -- I have to find the minutes. There
10 are minutes of a board meeting where the minority efforts of
11 the corporation were reviewed. It's the May 1992 --

12 MR. COHEN: Your Honor, could I be heard on this?

13 JUDGE CHACHKIN: Well, I'm asking for specific --

14 MR. COHEN: I think we might shortcut this if I
15 could be heard.

16 JUDGE CHACHKIN: All right. Go ahead.

17 MR. COHEN: Well, I, I respectfully urged earlier
18 that there has to be a foundation -- even if there is material
19 here of what NMTV is doing -- for this to be relevant under
20 the designated issues there has to be a foundation laid that
21 it's different than what Trinity's doing. Otherwise, there's
22 no relevance to this. Point one. Point two, Your Honor, for
23 your information, this company was founded in 1980, went into
24 business in 1980. It didn't start doing any local
25 programming, Your Honor, until 1992. I want to make sure you

1 understand that. From 1980 until 1992 it didn't broadcast one
2 local program. So --

3 MR. TOPEL: We didn't have a station, Your Honor,
4 until --

5 MR. COHEN: You had a station --

6 MR. TOPEL: -- the end of 1988 and the reasons why
7 there wasn't local programming are explained. Now, you know,
8 that's a very misleading characterization.

9 JUDGE CHACHKIN: Well, let's, let's -- I don't want
10 to get in any arguments about it. If you, if you, if you
11 have --

12 MR. TOPEL: Let me -- Your Honor, I'd like to answer
13 --

14 JUDGE CHACHKIN: Let's, let's cut out these
15 generalities. If you have specific facts they'll stand for
16 themselves. We don't need these general statements. I'm, I'm
17 striking that sentence. Any other objections?

18 MR. COHEN: Going on, Your Honor, my next objection
19 is on page 12, Your Honor --

20 MR. TOPEL: Your Honor, could I get clarification of
21 just what was stricken, which --

22 JUDGE CHACHKIN: What was stricken was the sentence
23 beginning -- the second sentence of paragraph 5.

24 MR. TOPEL: Just that sentence?

25 JUDGE CHACHKIN: That sentence, and also the --

1 MR. TOPEL: Part of the last sentence.

2 JUDGE CHACHKIN: Part of the last sentence. That's
3 correct. The objections were to those sentences.

4 MR. COHEN: Your Honor, my next objection is -- on
5 paragraph 13, page 12, and I there object to the sentence
6 beginning with -- the clause in the first sentence beginning,
7 "NMTV proceeded in good faith and did not intend to mislead
8 the FCC." That's exactly what's in issue at this proceeding.
9 That's what you have to determine. And for the witness to, to
10 make that remark is, is, is conclusory and it has no
11 evidentiary value whatsoever. That is the legal issue to be
12 determined, among others.

13 MR. TOPEL: Well, Your Honor, I, I, I think that the
14 principals of the applicant are entitled to testify to their
15 state of mind and that's all that is, is intended to do. Your
16 Honor knows well enough that that doesn't constitute a legal
17 conclusion, it constitutes the witness's testimony of her
18 state of mind. That is the issue and Mr. Cohen can cross-
19 examine and I, I'm sure he'll make every effort to show that
20 she had a different state of mind if he can.

21 JUDGE CHACHKIN: I'll receive it solely as to state
22 of mind. Any other objection?

23 MR. COHEN: Your Honor, paragraph 14 is a, is a
24 difficult paragraph for me to critique in a few words because
25 of the way it's written. I'll do my best to be brief. There

1 is present here something that appears in other paragraphs
2 where the witness speculates on what's in the designation
3 order. And I point to the second, second line where the
4 witness says, "The *de facto* issue apparently centers on the
5 suggestion that I do not exercise my own judgment for NMTV."
6 Now, that's argumentative, it's her characterization of the
7 hearing designation order which is not in evidence in this
8 proceeding which Your Honor is well aware and it's irrelevant.
9 And then she continues on in an argumentative fashion saying
10 that -- simply functions as a surrogate for Paul Crouch of
11 TBN. "Let me assure the FCC this is not the case." First,
12 she builds her straw man in an argumentative fashion and then
13 she proceeds to demolish it. I suggest to you that if this --
14 if questions like that were put to this witness on oral
15 examination and I objected you would never permit the answer
16 to conclude. And, and I, and I believe this paragraph is just
17 one -- just continues on in that vein. Continuing on where
18 she says, "She's a real minority who's a real member of NMTV's
19 board." It's argumentative, has no, no relevance. And where
20 she says she's -- referred to NMTV "As my own baby. I strived
21 for the company to grow and succeed." Those kinds of remarks
22 have no evidentiary value and I don't believe they have any
23 value to show her state of mind, no evidentiary value. And if
24 you wish, I can continue to go through the paragraph line by
25 line if that's helpful, Your Honor, and I, and I will if, if,

1 | if you need that assistance.

2 | JUDGE CHACHKIN: What is your response?

3 | MR. TOPEL: Your Honor, I, I feel like we're, we're
4 | being -- charges are being made against NMTV and now the
5 | argument's being made NMTV is not allowed to respond to those,
6 | those charges. The hearing designation order is, is very
7 | clear that one of the central if not the central charge in
8 | this case is that although Mrs. Duff is a black woman, she
9 | doesn't sit on that NMTV board as an individual black, she
10 | sits there as an employee of Trinity Network and therefore
11 | since she thinks Trinity and doesn't think Jane Duff, Trinity
12 | controls the board. That's the heart of the issue. The
13 | designation order makes that clear in several places. It
14 | says, "Two of NMTV's three directors were high-ranking TBN
15 | employees," therefore Mrs. Duff being a TBN employee can't be
16 | Mrs. Duff. I mean, that's, that's what this issue to be
17 | designated is, is Mrs. Duff an individual, independent thinker
18 | or is she controlled by Paul Crouch or TBN. The reference to
19 | -- there's a reference to TBN's apparent ability to dominate
20 | NMTV's board of directors, again tied to the fact that it's
21 | Mrs. Duff who's a TBN employee and also a director, something
22 | the FCC was, was informed in filings by the way. But that's
23 | the whole issue in the case, that's what led to a designation
24 | order, that Mrs. Duff isn't real. And for her not to be able
25 | to testify and address that in the language that she wishes to

1 address it and indicate that that is -- that's, that's wrong
2 and, and she -- she'll be here, she can be cross-examined on
3 it. But I think she has to be permitted to respond to the
4 issues that were designated against her.

5 JUDGE CHACHKIN: Well, I assume Mr. Cohen's concern
6 is that she's not responding to the issues, she's just making
7 general statements, offering conclusions.

8 MR. COHEN: Exactly, Your Honor.

9 MR. TOPEL: Well, this is a fact, "I do not function
10 as a surrogate for Paul Crouch. I sit on the board as an
11 individual, I, I vote my own mind," that's her testimony.

12 MR. COHEN: Your Honor, could I be heard?

13 JUDGE CHACHKIN: Yes.

14 MR. COHEN: Mr. Topel is an excellent lawyer, and
15 again what he's done is put a kind of spin on this designation
16 order. He's, he's distorted the designation order. What the
17 designation order does is asks -- it calls for a factual
18 determination exactly along the lines of what you mentioned
19 earlier today. And what's relevant for you in order to decide
20 this issue are the facts. Just give me the facts, the kinds
21 of matters that have you referred to, and that's what the 200-
22 some-odd exhibits that we have, they're factual exhibits from
23 which you can draw inferences of control or no control. And
24 to say that this designation order all turns on whether Jane
25 Duff is a surrogate or not of Paul Crouch is a red herring

1 again. The issue before you, Your Honor, is where there
2 actions where which demonstrated that one corporation
3 controlled another. To the extent this woman's testimony has
4 factual matter on that point, I would never object and it's
5 fair game. But this -- this kind of, of testimony is not
6 factual and it's not helpful and it doesn't do anything to
7 resolve the issue of whether control existed.

8 MR. TOPEL: Your Honor, I would like to respond.
9 First of all, I, I appreciate Mr. Cohen's repeated comments
10 about what an excellent attorney I am, I'm not sure that the
11 case is going to vindicate that or not. I also -- and I know
12 Mr. Cohen meant nothing by this, but there are no intention
13 red herrings in our direct case or in arguments that I'm
14 making to you. There is nothing set up as straw men to shoot
15 down or anything like that. We presented our case in, in
16 straightforward, good faith because we thought this was
17 relevant testimony and, and we still think it's relevant
18 testimony. In the last sentence of paragraph 36 of the
19 designation order the Commission says, "Finally, the
20 person -- " and this is on personnel, one of the three
21 criteria of *de facto* control, "Finally, the personal -- the
22 person purportedly responsible for personnel matters at NMTV,
23 Duff, is a long-time TBN employee." Now, Mrs. Duff is
24 entitled to say the Commission has raised a question, I think
25 the designation order speaks in dispositive terms, but I think

1 that, that Your Honor and I know from being with the Mass
2 Media Bureau at depositions that everyone is a little more
3 open-minded than that and that we're going to see the evidence
4 and judged based on, based on the evidence. But Mrs. Duff
5 certainly has a right to say, well, if the Commission has
6 written a designation order that says although I'm responsible
7 for the personnel matters and I'm black, we've abused process
8 because really I'm not Jane Duff and black, I'm really a, a
9 long-time TBN employee, she has the right to say I'm not
10 guilty, that's not true, I do make the personnel decisions and
11 I'm a legitimate bona fide black and the fact that I happen to
12 have a job for TBN doesn't require a finding that I'm a person
13 -- or that anybody has a finding of bad character. I mean, we
14 have a right to -- this is, this is the only bill of
15 particulars we have is what's in the designation order and it,
16 it's clear and unmistakable from the designation order that
17 what was troubling the Commission a great deal and, and this
18 came up with the, with the Commission's attorneys during,
19 during discovery, what troubled the Commission a great deal
20 was that Mrs. Duff was employed at TBN and the Commission had
21 some concern as to whether that through her TBN exercised
22 control and she has a right to testify that that is not true.

23 JUDGE CHACHKIN: All she said is basically that it's
24 not true.

25 MR. TOPEL: That's right.

1 JUDGE CHACHKIN: She hasn't given -- provided any
2 evidence demonstrating why the Commission has concluded it's
3 not true.

4 MR. COHEN: That's the point.

5 JUDGE CHACHKIN: She's made general statement by
6 saying this is my own baby and I am -- nowhere has she said
7 that the fact that she works for TBN and, and she's employed
8 by them and she receives a salary presumably by them --
9 explained why this doesn't affect her decisions or, or, or
10 explain why personnel practices may be the same, identical as
11 they are at TBN or programmings may be the same as they are
12 identical to TBN.

13 MR. TOPEL: Very much explained, Your Honor,
14 throughout her testimony.

15 JUDGE CHACHKIN: Well, just by making a general
16 statement that what she says, "My own baby and I grow," and,
17 and she makes the statement that "I'm my own person"?

18 MR. TOPEL: Well, the, the point --

19 JUDGE CHACHKIN: That doesn't -- that, that's --
20 just self statements, that's all they are.

21 MR. COHEN: You can't write --

22 MR. TOPEL: Well, but the point is --

23 MR. COHEN: -- a finding on that, Your Honor.

24 JUDGE CHACHKIN: That's all they are. They're not
25 facts. If a person gets up and says, "I'm innocent," and

1 rests does that make the person innocent, could you draw a
2 conclusion that she's innocent because the person said -- you
3 have put in evidence, at least in a civil proceeding you do.

4 MR. TOPEL: Well, she's, she's done both, but I
5 think a witness is entitled to say I'm innocent and here is --

6 JUDGE CHACHKIN: And this is why I'm --

7 MR. TOPEL: -- and here is the rest of my testimony
8 and, and it's, and it's --

9 JUDGE CHACHKIN: Well, where, where --

10 MR. TOPEL: -- in there.

11 JUDGE CHACHKIN: Well, that's what I'm waiting for.

12 MR. TOPEL: But, well, well, it's in --

13 JUDGE CHACHKIN: Where, where are the facts? Where,
14 where are the facts demonstrating that the fact she's employed
15 by TBN has no bearing on, on the decisions -- the personnel --

16 MR. TOPEL: Well, it's, it's --

17 JUDGE CHACHKIN: Go ahead, counsel.

18 MR. SCHONMAN: Your Honor, if I -- if, if the Bureau
19 may weigh in on this?

20 JUDGE CHACHKIN: Certainly. I'd like to have --

21 MR. SCHONMAN: The concern that the Bureau has is
22 that there are, are broad generalities here. I don't mind
23 Mrs. Duff providing a comment about her state of mind or her
24 belief, but it has to be backed up with some facts. And the
25 only fact, the only fact that I see in paragraph 14 of her

1 direct testimony is really in the first sentence, the fact, "I
2 am the person who is responsible for the day-to-day affairs of
3 NMTV." Beyond that, I don't see anything of any relevance in
4 this paragraph.

5 MR. TOPEL: "I am not a surrogate for Paul Crouch,"
6 is a factual statement of this witness. Now, it's subject to
7 cross-examination and whatever arguments, but, but that is a
8 factual statement, that I am on the board not as a surrogate
9 of Paul Crouch. And, and, and --

10 JUDGE CHACHKIN: That's a conclusion.

11 MR. TOPEL: -- it's explained.

12 JUDGE CHACHKIN: That's a conclusion. That's not a
13 fact. That's a conclusion.

14 MR. TOPEL: Well, it's the witness's state of mind
15 which again goes to representations that were made to the FCC,
16 whether they were made in good faith --

17 JUDGE CHACHKIN: That's not being offered, the state
18 of mind, that's being offered for the proof of the matter that
19 she's not a surrogate of Paul Crouch. The type of evidence
20 that should be in here, decision A, B, C, D were made and I
21 made it and I had no contact with them -- with TBN and we
22 didn't discuss the matter with TBN and at the time I, time I
23 became an employee there is, there is documents showing that,
24 that I would be separate and apart from TBN and on and on and
25 on. That's the type of evidence I'm looking for.

1 MR. TOPEL: Well, I think --

2 JUDGE CHACHKIN: Not statements that -- of the
3 nature that I'm not a surrogate. That doesn't --

4 MR. TOPEL: Your Honor, I --

5 JUDGE CHACHKIN: -- advance the record. These are
6 not facts.

7 MR. TOPEL: I think that there is that evidence, and
8 I think with all due respect the witness's state of mind as to
9 whether she really is an owner of this company that is accused
10 of not truly being a minority-owned company is, is relevant
11 testimony for --

12 JUDGE CHACHKIN: Well, she's a member of the board
13 of directors --

14 MR. TOPEL: -- her to offer but --

15 JUDGE CHACHKIN: -- so she's an owner in that sense,
16 and that's what you argued in your -- when the Commission
17 designated --

18 MR. TOPEL: As part of --

19 JUDGE CHACHKIN: -- for a hearing. The Commission
20 said control is a different factor than -- ownership.

21 MR. TOPEL: Well, that's the issue that we're
22 litigating. That has, that has --

23 JUDGE CHACHKIN: But litigating control, not
24 ownership.

25 MR. TOPEL: -- to be, that has to be resolved. But

1 I do want to make one other point, and that is this suggestion
2 that Trinity or TBN is not permitted to have anything to do
3 with National Minority is not well founded legally. The
4 Commission rule under which National Minority created says
5 that a group owner can have a cognizable interest which in the
6 case of nonprofit corporations is you officers and your
7 directors. And Dr. Crouch is the president and he is a
8 director, that was in the applications that the Commission
9 approved. His definition as president and chief operating
10 officer was approved. And it, it's, it's not conclusive or
11 it's not required in the slightest that Mrs. Duff must have --
12 or that NMTV must have done everything without the involvement
13 of TBN or, or Mr. Crouch.

14 JUDGE CHACHKIN: This is legal argument. We're not
15 at that stage. All I'm trying to do is get the facts. That's
16 all I'm trying to do, and, and I don't think this paragraph
17 provides any facts.

18 MR. COHEN: That's all I'm saying, Your Honor,
19 there's no facts.

20 JUDGE CHACHKIN: And if she was on the stand and
21 questions of this nature were put to her and there was an
22 objection you know as well as I that the objection would be
23 sustained. The only thing is, you're putting this in a
24 written document and therefore because you put it in a written
25 document apparently you think you can get away with things you

1 | couldn't get if the witness was here. You think you could put
2 | questions like this to the witness and, and the objections
3 | would be -- would not be sustained?

4 | MR. TOPEL: Well, Your Honor, I think I could ask
5 | the witness to what extent she considered or her state of mind
6 | was that she was a surrogate for Dr. Crouch, and when she
7 | answered ask her why not and I think the only difference is
8 | because we have a written case some of that explanation
9 | appears in, in subsequent pages not adjacent to this
10 | particular sentence. But the evidence -- the exhibit taken as
11 | a, as a whole supports the, the statements that, that are
12 | general and introductory defining her state of mind, but then
13 | it's followed with an explanation of why that's her state of
14 | mind. There is extensive testimony about her, her personal
15 | background and some, some setbacks that her, her family had
16 | with the, with the conclusory point -- or the point meaning
17 | that the fact that she gets a salary from Trinity Broadcasting
18 | Network doesn't give Trinity Broadcasting Network control over
19 | here and there are, there are paragraphs of why that's true.
20 | I believe there are -- I believe the supporting facts are in
21 | the exhibit and admittedly if this was direct testimony from
22 | the witness then we, we might have presented the questioning
23 | in a different order, but it's all there.

24 | MR. COHEN: Well, Your Honor, I disagree. I think
25 | you have to deal with this paragraph by paragraph. And I

1 think that you can, you can justify a paragraph of, of
2 conclusions by saying that later in the document we've got
3 some facts to back it up. This is supposed to be factual
4 testimony, Your Honor, not proposed findings of fact.

5 JUDGE CHACHKIN: I notice in paragraph 15 -- refer
6 to specific Tab G which allegedly backs up the statement in
7 paragraph 15. What -- but I notice in paragraph 14 there's no
8 reference to anything that backs up the statements made there.

9 MR. COHEN: And I have no objections to 15, Your
10 Honor.

11 MR. TOPEL: Let me -- may I have one second, Your
12 Honor? Well, she makes reference in paragraph 14 to the, the
13 fact that she and Pastor Espinoza outvoted Dr. Crouch as a
14 fact showing that why she believes this is minority controlled
15 and she is not a surrogate.

16 JUDGE CHACHKIN: "Concerning the matters described
17 above," what matters is she talking about?

18 MR. TOPEL: Paragraphs 5 -- paragraphs -- let me
19 give you the correct number. Paragraphs 4-A, B, C and D
20 talked about specific instances which Dr. Crouch wanted
21 National Minority Television to do something and Mrs. Duff and
22 Pastor Espinoza, the two minorities on the board, outvoted
23 him. And so I think that supports in, in great factual detail
24 her testimony that she's not a front for TBN or a surrogate
25 for TBN and the fact that she's an employee of TBN hasn't

1 affected her independence.

2 MR. COHEN: I don't think that, that rehabilitates
3 the paragraph, Your Honor. I mean, the facts will, the facts
4 will be the facts. Mrs. Duff -- if you're persuaded that the
5 facts are as Mr. Topel suggests, this sentence is not even
6 needed. You can learn that from the facts in the exhibit.

7 JUDGE CHACHKIN: Is that the, is that the only
8 paragraphs that, that support the statements made in 14?

9 MR. TOPEL: Those are the only statements that deal
10 with direct outvoting of Dr. Crouch. There is --

11 JUDGE CHACHKIN: Anything that supports --

12 MR. TOPEL: -- lots of other evidence about her
13 active involvement or National Minority. There is a paragraph
14 that talks in some specificity about the differences between
15 the -- her role as a director of NMTV and as an employee of
16 TBN.

17 JUDGE CHACHKIN: Well, let me make it clear so
18 we -- before we go on. Where do you offer conclusions and
19 generalizations I will only receive it as factual support if
20 you can demonstrate the factual support in the record. If you
21 can't -- each one of these general paragraphs should have a
22 reference to some factual support for the statements made.
23 Merely standing alone as generalizations, they provide --
24 they're not useful at all for the record. And since paragraph
25 14, other than the fact that she responsible for day-to-day

1 | affairs of NMTV -- the rest of the matter -- there's nothing
2 | there indicating any factual support except where you said
3 | she, she and another person on the board outvoted Crouch --
4 | I'm not going to receive the paragraph. And I will not
5 | receive any other paragraphs where there are generalizations
6 | of this nature unless where there are facts that support it,
7 | that's a different situation. But not -- if you can't point
8 | to facts in this record -- I don't care -- if they're not in
9 | this record and they're not in evidence, I'm not going to --
10 | unsupported conclusions will not be part of this record and
11 | that's what we have here -- paragraph 14 --

12 | MR. TOPEL: Well, I, I agree that you shouldn't
13 | receive that kind --

14 | JUDGE CHACHKIN: -- except for the sentence that she
15 | is the person who is responsible for the day-to-day affairs of
16 | NMTV, the remainder of the paragraph is not received.

17 | MR. TOPEL: Well, Your Honor, does that include the,
18 | the four examples of her taking a position antithetical to Dr.
19 | Crouch which is cross-referenced in this very paragraph --

20 | JUDGE CHACHKIN: Which sentence is that?

21 | MR. TOPEL: -- isn't factual? "If I were, I
22 | obviously would not have outvoted Dr. Crouch concerning the
23 | matters described above." Doesn't that support the paragraph?

24 | JUDGE CHACHKIN: It doesn't support her general
25 | conclusion. It shows just four instances. And I, I -- the

1 paragraphs dealing with her outvoting are in the record and
2 the triers of the fact can conclude on the basis of that
3 whether or not she is in control or not. We don't need her
4 statement saying that she's in control. That's, that's
5 just -- that's self -- what is that called? Self what?

6 MR. SCHONMAN: Serving.

7 JUDGE CHACHKIN: Self-serving. That's exactly what
8 it is.

9 MR. TOPEL: Well, I would say self --

10 JUDGE CHACHKIN: And there are many paragraphs of
11 this nature which are self-serving and not factual. Self-
12 serving statements serve no purpose unless they may go to
13 intent. But as to prove the truth of the matter, self-serving
14 statements are no benefit.

15 MR. TOPEL: Well, Your Honor, I would offer these
16 statements for intent. Our purpose --

17 JUDGE CHACHKIN: Well, it doesn't go to intent.

18 MR. TOPEL: Our purpose was for both. But I
19 certainly think that Mrs. Duff has been accused in this case
20 of a very terrible thing and she's certainly entitled to say
21 I'm not guilty. And, and I think the -- you're right to the
22 extent that the whole record doesn't support the conclusion,
23 you, you either shouldn't receive it or you shouldn't make any
24 findings or conclusions on it. But I don't think that, that
25 we necessarily should have to be bound to give the support in

1 the, in the, in the same paragraph that the statement is made
2 if the support is in the record.

3 JUDGE CHACHKIN: Well, you will have to point out in
4 each case. There should be a reference in each one of these
5 paragraphs -- where a conclusion is made there should be a
6 reference of facts based -- which it was based on. Otherwise,
7 it's just self-serving statements without any factual support.

8 MR. TOPEL: Well, I think there, there are many
9 paragraphs of her testimony of the way she acted as an owner
10 for NMTV and, and --

11 JUDGE CHACHKIN: Well, if there are such paragraphs
12 then certainly those paragraphs are relevant, but this is not
13 one of those paragraphs. What other objections do you have?

14 MR. COHEN: I have no -- nothing --

15 MR. TOPEL: Your Honor, can I, can I get a clear
16 ruling on what -- on --

17 JUDGE CHACHKIN: My ruling on 14, I've only admitted
18 the one sentence.

19 MR. COHEN: And which sentence is that, sir?

20 MR. TOPEL: Which is?

21 JUDGE CHACHKIN: The first sentence saying, "I'm the
22 person responsible for the day-to-day affairs of NMTV." And
23 if she would have indicated there what the nature of her day-
24 to-day affairs that she was responsible for and how she's
25 dealt with them, which appear to be the -- what, what the

1 paragraph was leading to and it doesn't, it certainly would
2 have been relevant. That's --

3 MR. TOPEL: Your Honor, if I, if I can point to
4 other paragraphs where she explains the nature of her
5 responsibility for the day-to-day affairs --

6 JUDGE CHACHKIN: Well, fine, then --

7 MR. TOPEL: -- would you reconsider? I just -- I
8 need a minute to find them, but they're in there.

9 JUDGE CHACHKIN: But we don't need -- we don't need
10 this, this paragraph then. We have those paragraphs, those
11 are the facts. Let's deal with them. Why do we need her
12 conclusions as to this -- on the basis -- why do we have to
13 have her conclusions? The triers of the fact will make the
14 conclusions based on the record facts. We don't need this
15 preface, we don't need this summary of hers. That doesn't add
16 anything to the record. Either you have the facts or you
17 don't. Let's go on to the next -- any other -- further
18 objections?

19 MR. COHEN: On paragraph 15, Your Honor, I object to
20 the last sentence if this is coming in for the truth of the
21 proposition asserted. Now, if it's coming in to show her
22 state of mind, I have no objection to that. But it would be
23 improper if this came in for the truth of the proposition
24 asserted because that's the judgment that you have to make.

25 JUDGE CHACHKIN: You mean --

1 MR. COHEN: "Clearly, I had no intent to conceal."

2 JUDGE CHACHKIN: It will only be received for, for
3 the state of mind.

4 MR. COHEN: Then I, then I have no objection.
5 Paragraph 17 is my next --

6 JUDGE CHACHKIN: Yes?

7 MR. SCHONMAN: Your Honor, I've been reluctant to
8 raise any objections that I have. I, I didn't know --

9 JUDGE CHACHKIN: Well, maybe we'll do it paragraph
10 by paragraph. Do you have any objection on that paragraph?

11 MR. SCHONMAN: Yes, as a matter of fact I do.

12 JUDGE CHACHKIN: All right.

13 MR. SCHONMAN: I have objections to previous
14 paragraphs as well. I don't know if you want to go back, but
15 since we're on 15 perhaps we should take it from --

16 JUDGE CHACHKIN: All right. Let's have 15 now.

17 MR. SCHONMAN: Actually, my objection goes to 15 and
18 16 -- 15 and 16. If it's coming in -- it, it appears that
19 these paragraphs are being offered to dispute some sort of
20 undisclosed real part of interest issue and there is no such
21 issue in this case. I mean, the HDO points out that, that
22 Mrs. Duff was employed by TBN, a long-standing employee of
23 TBN, and I don't understand why they're -- why this
24 information is being offered.

25 MR. TOPEL: Well, Your Honor, major parts of the

1 designation order to relate to things that were disclosed to
2 the FCC. Some things it appears that the FCC may, may have,
3 have missed. But there is case law that voluntary disclosure
4 of, of relevant information negates an inference of, of an
5 intent to deceive the Commission, and we have an abuse of
6 process issue here as well as a *de facto* control issue and,
7 and goes to mitigation as well in terms of the penalty you
8 should impose. If, if an applicant did something wrong and it
9 was hidden and concealed you may conclude that that has to be
10 disqualifying. On the other hand, if it was all put on the
11 Commission and it was an innocent misunderstanding as to what
12 the policy was or the rule was, you may say yes, there's *de*
13 *facto* control but that's not a disqualifying defect, may or
14 may not even warrant a forfeiture. But there is quite of case
15 law that indicates that the disclosure of information that's
16 at issue by the applicant is a mitigating factor.

17 JUDGE CHACHKIN: And the disclosure here was the
18 fact that she was employed by TBN?

19 MR. TOPEL: As administrative assistant to the
20 president, yes.

21 JUDGE CHACHKIN: But what, what does -- what, what
22 is your argument? The fact that she was employed as
23 administrative assistant to the president -- somehow put the
24 Commission on notice that that was *de facto* control question
25 existed with respect to NMTV? Is that what you're saying?

1 MR. TOPEL: Well, that's what the Commission seems
2 to have, have charged us with, that we have someone who's an
3 employee of TBN who's on our board of directors --

4 JUDGE CHACHKIN: But that's --

5 MR. TOPEL: -- and, and we want to make clear that
6 the, the Commission knew that, we weren't hiding that from
7 anybody.

8 JUDGE CHACHKIN: I understand that, but that's one
9 of many factors. That's not the sole factor the Commission
10 based their case on. They based it on many other things.

11 MR. TOPEL: That's correct, but we can only
12 respond --

13 JUDGE CHACHKIN: So, so, the fact that she
14 didn't -- she -- they told the Commission that she was
15 employed by TBN, what, what notice did that give to the
16 Commission? That she was employed by TBN. What else did it
17 tell the Commission?

18 MR. TOPEL: That we were not concealing from the
19 Commission that --

20 JUDGE CHACHKIN: That she was employed by TBN.

21 MR. TOPEL: That's right, which is, which was one of
22 the items in the bill of particulars against us, Your Honor.
23 We can only answer them, them one at a time. But I think the
24 whole --

25 JUDGE CHACHKIN: Apparently there's an attempt to

1 place an inference somehow that the Commission should have
2 been aware of what happened at NMTV because there was a
3 disclosure that she was an employee of, of TBN.

4 MR. TOPEL: That, that if, if the sanction to be
5 imposed against Trinity Broadcasting of Florida is to be based
6 on the fact that Mrs. Duff while a director of NMTV was also
7 an employee of TBN which seems to be one of the things that's
8 troubling the Commission I think it's fair for us to have the
9 opportunity to say we weren't concealing that. If there was
10 something wrong with it -- I'm not aware of any case that,
11 that says that Mrs. Duff was required to resign her position
12 at TBN to, to be on the NMTV board. But if there's, if
13 there's an allegation that something is improper, the fact
14 that the applicant was above board about it and shows --
15 certainly shows that there was no willfulness to vitiate
16 anything and I think that goes directly to penalty --

17 JUDGE CHACHKIN: I don't see how disclosure of that
18 nature has any bearing at all on whether or not there was de
19 facto control or not.

20 MR. TOPEL: But it goes to, it goes to intent.

21 JUDGE CHACHKIN: Or to intent -- the fact there was
22 a disclosure that she was an employee of TBN has any bearing
23 on, on whether they intended to violate 310(b) with respect
24 NMTV, I don't, I don't understand that.

25 MR. TOPEL: Your Honor, there are, there are many